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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,532	10/16/2003	Gerald Duhamel	14296-17US-1	4021
31831	7590	04/11/2007		EXAMINER
LABTRONIX CONCEPT INC. C/O OGILVY RENAULT 1981 MC GILL COLLEGE AVENUE SUITE 1600 MONTREAL, QUEBEC, H3A 2Y3 CANADA				WILLIAMS, ROSS A
			ART UNIT	PAPER NUMBER
			3714	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/11/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/686,532	DUHAMEL, GERALD
	<b>Examiner</b>	<b>Art Unit</b>
	Ross A. Williams	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>11/5/2004</u> .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 9, 14, 15, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what the Applicant means by "payoff percentage" as used in the claim language.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 5 – 9 and 13 – 24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a process or method of providing game records for use in a game, receiving player input, distributing records to a player and enabling a player to play an auxiliary game. To be statutory, a computer related process must result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan. A statutory process is an act or a series of acts, performed upon the subject matter to be transformed and reduced to a different state or thing. While the process or method can

be deemed useful, it fails to produce a concrete and tangible result as required by 35 U.S.C. 101. See MPEP 2106.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1 – 7, 10 – 13 and 16 – 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (US 6,497,408).**

**Claims 1 – 7, 10 – 13 and 16 – 23:** Walker et al (hereinafter Walker) discloses a game wherein the player is able to play a primary lottery game and after playing the primary lottery game, the player is allowed to play a auxiliary game also termed a "meta-game". Walker discloses "*generally, embodiments of the present invention allow lottery players to register a group of one or more primary lottery drawing entries in a secondary game (the "meta-game"). As used herein, the term "primary lottery drawing" is used in a general sense and is intended to include any drawing, lottery or casino type. The term "group" or "registered group" is used to describe a set of at least one primary lottery entry registered or being registered in a meta-game. A player can receive a meta-game award based on the status of his or her registered group. For example, in*

*one embodiment, a player who has registered a group of primary lottery drawing entries qualifies for an award in a meta-game if all of the primary lottery drawing entries in the player's group lose in the primary lottery drawing. In other embodiments, a meta-game operator or sponsor can establish other rules and thresholds governing when a player qualifies for an award. For example, rules may be established where a player qualifies for a meta-game award if the primary lottery drawing entries in the player's group fail to cumulatively win an award above a certain threshold in the primary lottery drawing.*

*Other variations and rules will be apparent upon reading this disclosure" (Walker 4:17 – 40). Walker discloses "For example, a meta-game operator or sponsor may wish to provide different price and award terms for players who register larger groups of primary lottery entries. As depicted in the example table 132 of FIG. 3, players may receive different price and award terms for registering in groups of one, two, five, ten, twenty or thirty entries at a time. In some embodiments, a player may be permitted to register a group in stages. For example, a player may register several primary lottery drawing entries in a first registration, and then later add to the group by registering several additional primary lottery drawing entries. In these embodiments, the player may be given a refund or credit if the total number of primary lottery drawing entries qualifies for a discount. In a further embodiment, a player need not register each member of a group at the same time. Instead, primary lottery drawing entries can be registered at different times and from different terminals to form a single group. The registration price per primary lottery entry 136 may be a number identifying a set price for registering each primary lottery entry in a meta-game. This price may be established by the lottery*

*operator or sponsor and can be selected to encourage participants to register groups of primary lottery entries. For example, the registration price per entry 136 may be reduced (e.g., \$0.20 vs. \$0.25) for players who register a large group of primary lottery drawing entries (e.g., twenty or thirty vs. one or two) in a meta-game" (Walker 7:62 – 8:23).*

Thus, Walker discloses the use of a plurality of primary game outcomes that are deemed winning or losing outcomes or game entries. The player can then pay/wager to have these primary winning/losing outcomes registered into the secondary game event. The player can be guaranteed a win in the secondary game, but this guarantee is not absolutely necessary. The player can be qualified to register primary game entries into the secondary game if the winnings of from the primary game event are within designated award thresholds (Walker 9:19 – 60). Walker further states that game winnings from the primary game may be accumulated into a player account. The player account may be debited and credited according to a players wins and losses, as well as according to if the player chooses to play the meta-game which they must pay to be registered for. Thus, the purchase values of the meta-game entries are withdrawn from the player game account which holds game win values from previous primary game wins (Walker 15:63 – 15). Walker further discloses that the player is given the option to play the meta-game, thus participation in the meta-game is not mandatory (Walker 3:19 – 32). Walker discloses that communication between the player terminals and the game controller may take place across a network or some other type of remote arrangement (Walker 4:41 – 45, 5:27 – 40).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US 6,497,408).**

**Claim 16:** Walker does not specifically state that the win value of the auxiliary game has a win value that is equal to twice the purchase value of the winning records. However Walker does discloses a table that lists the win values of registered game entries of the auxiliary game. Walker discloses that the win values are at least equal to the purchase value of the auxiliary game entries and greater than the purchase values of the auxiliary game (Walker 7:36 – 65, FIG 3). Thus it would be obvious to one of ordinary skill in the art to modify Walker to specify that the win values of the auxiliary games are exactly equal to the purchase values of the auxiliary game. This would ensure that the player receives at least the value of the wager/purchase price in the event of a winning entry. Thus ensuring that the player receives a positive outcome for the risk of wagering a sum of money.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ross A. Williams whose telephone number is (571) 272-5911. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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3/27/07

  
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